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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,679	09/08/2000	Marc A. Edlein	D-43378-01	2639

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EXAMINER

NOLAN, SANDRA M

ART UNIT PAPER NUMBER

1772

DATE MAILED: 12/03/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

cls 17

<b>Office Action Summary</b>	Application No. 09/657,679	Applicant(s) EDLEIN ET AL.	
	Examiner Sandra M. Nolan	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-106 are pending.

### **Withdrawal of Allowance**

2. The allowability of claims 3, 11, 14-16, 28, 29, 36 and 39-41 is hereby withdrawn in order to apply the new grounds of rejection below.

### **Rejections Withdrawn**

3. The 35 USC 102 rejection of claims 1-2, 4-9, 12-13, 17-20, 23-27, 30-34, 36-38, 42-46 and 50-55 over Mossbrook (US 6,231,953) set out in section 7 of the 24 April 2003 office action (Paper No.13) is withdrawn in view of the statements in the Mossbrook Rule 132 declaration dated 27 August (Paper No. 15) and the arguments in the response dated 27 August 2003 (Paper No. 16).
4. The 35 USC 103 rejection of claims 21-22, 47 and 48 over Mossbrook recited in section 9 of Paper No. 13 is withdrawn in view of the statements and arguments in Paper Nos. 15 and 16.
5. The 35 USC 103 rejection of claims 10-11, 14-16, 35-36, 39 and 40 over Mossbrook in view of Qinghong et al (US 6,046,330), as set out in section 10 of Paper No. 13, is withdrawn in view of the statements and arguments in Paper Nos. 15 and 16.

### **New Rejections**

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-10, 12-13, 16-17, 19-24 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al (US 6,060,136) in view of Lovin et al (US 5,407,708).

Patrick et al teaches printable (col. 2, lines 17-18) multilayer films for oxygen-sensitive foods (col. 4, lines 51-63) having antifog inner layers and printed outer layers (col. 10, lines 16-20 and col. 12, lines 28-34). It fails to teach the use of heat/radiation curable printing inks.

Lovin teaches radiation curable inks in printing for food packaging (col. 1, line 8). The inks may be cured with UV and e-beam radiation (col. 6, lines 14-26) to give packaging that may be abused (col. 3, lines 16-19). Low levels of radiation are used to minimize shrinkage during printing (col. 6, lines 49-55).

The patents are analogous because they both deal with food packaging films.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the inks of Lovin to print on the films of Patrick and to subject the printed films to low levels of radiation to cure the films without causing undesirable shrinking.

The motivation to employ the inks and low radiation levels of Lovin to print on the films of Patrick is found at col. 3, lines 16-19 and col. 6, lines 49-55 of Lovin, respectively, where the use of its inks on abuseable packaging and the use of low

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radiation levels is said to minimize shrinkage of films printed using its inks and radiation levels.

It is deemed desirable to make good packaging that can withstand abuse and whose films show minimal shrinkage in order to insure that packaged foods remain attractive to consumers.

The use of ink levels that tend to minimize ghosting is deemed a matter of optimization. In re Peterson, 65 USPQ2d 1379 (Fed.Cir, 2003).

The use of solvent-based inks and/or inks containing particular types and numbers of reactive binders is deemed a matter of engineering choice, depending upon the properties desired in the ink layer.

In the absence of convincing objective evidence to the contrary, the use of 50 keV or less of radiation to cure the inks of Lovin to any desired extent is deemed a matter of engineering choice, depending upon environmental and cost considerations.

8. Claims 11, 14-15, 18, 27-51, 54-55 and 66-106 are rejected under 35 U.S.C. 103(a) as unpatentable over Patrick in view of Edlein (US 6,528,127; filed 08 March 1999).

Patrick is discussed above. It fails to teach heat set inks or overprint coatings.

Edlein teaches heat set (col. 9, lines 41-43) inks and overprint coatings that are radiation cured after they are printed on thermoplastic food packaging films (col. 12, lines 23-36). The films may contain antifog agents (col. 7, lines 44-45). The overcoat is set with heat (col. 13, lines 19-22). Radiation levels of 50 keV are taught as useful (col. 11, lines 61-63) for curing the overcoat. The overcoated ink has a gloss of 75% or more

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9col. 12, lines 20-21). It teaches that its coatings give resistance to shrinkage, scratching and flaking (col. 14, lines 21-29).

The patents are analogous because they both deal with food packaging films.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ Edlein's inks and overprint coatings on the packaging films of Patrick in order to make printed packaging whose printed layers do not shrink, scratch or flake unacceptably.

It is deemed desirable to package foods in films that do not shrink, scratch or flake unacceptably in order to maximize consumer acceptance.

The use of ink levels that tend to minimize ghosting is deemed a matter of optimization. In re Peterson, 65 USPQ2d 1379 (Fed.Cir, 2003).

The use of solvent-based inks and/or inks containing particular types and numbers of reactive binders is deemed a matter of engineering choice, depending upon the properties desired in the ink layer.

In the absence of convincing objective evidence to the contrary, the use of 50 keV or less of radiation to cure the inks of Edlein to any desired extent is deemed a matter of engineering choice, depending upon environmental and cost considerations.

9. Claims 25-26 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admission on page 1 regarding food packages in view of Patrick and Edlein.

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Applicants have admitted, at page 1, lines 7-18, that moisture-containing foods are conventionally packaged in trays having films around them. The statement does not refer to the films, inks and overcoats of applicants' claims.

Patrick and Edlein are discussed above.

The admission and the patents are analogous because they all deal with food packaging.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the films suggested by the combination of Patrick and Edlein in the conventional packages discussed on page 1 of the specification.

The motivation to employ the films of Patrick in the packaging discussed in the specification is found in Patrick at col. 4, lines 51-63; col. 10, lines 16-20; and col. 12, lines 28-34, where shrinkage control and multilayer films for oxygen-sensitive foods having antifog inner layers are taught.

The motivation to employ the Edlein inks and overcoats is found at col. 14, lines 21-29 thereof, where Edlein teaches that its coatings give resistance to shrinkage, scratching and flaking.

It is deemed desirable to make coatings for foods using trays covered with films that exhibit less shrinkage (per Patrick and Edlein) and that resist scratches and flaking (per Edlein) in order to maximize consumer acceptance.

In the absence of convincing objective evidence to the contrary, the use of 50 keV or less of radiation to cure the inks and overcoats of Edlein is deemed a matter of engineering choice, depending upon environmental and cost considerations.

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***Response to Arguments***

10. Applicant's arguments with respect to claims 1-106 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/872-9306. The receptionist answers 703/308-0661.



S. M. Nolan  
Patent Examiner  
Technology Center 1700

SMN/smn  
09657679(17)  
22 November 2003